



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,882	11/05/2003	Colin Ford	7199	6706

26158 7590 07/25/2006

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC  
ATTN: PATENT DOCKETING 32ND FLOOR  
P.O. BOX 7037  
ATLANTA, GA 30357-0037

EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT PAPER NUMBER

3728

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/701,882	FORD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shian T. Luong	3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21,23-43 and 45-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,23-25,28-29,31-43,45-47,49,51-52 is/are rejected.
- 7) ☒ Claim(s) 26,27,30,48 and 50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21,23-25,28,29,31,32,34-36,43,45-47,49,51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkel et al. (US 3,002,613) in view of Mott (US 2,152,079). Merkel et al. discloses a combination shipping and dispensing carton which can be converted into side-by-side dispensers for dispensing pouches in their upright position. The carton comprising a bottom panel 19a,19b, a top panel 18a,18b and foldably attached adjoining side panels 20a,20b,21a,21b, with each end being closed by a top end flap 48,49 foldably attached to the top panel, a side end flap foldably attached to each side panel, a bottom end flap foldably attached to the bottom panel, with means for securing the flaps in the closed position. The carton has a pair of tear lines 22,23 extending through a side panel between the top panel and the bottom panel. A fold line 27,28 that is scored or interspersed with cuts extends in the other side panel. The fold line and the pair of tear lines being interconnected so that when the pair of tear lines have been torn open, the carton can be formed in to side-by side dispensers by folding the folding line in the other side panel. The interconnection between the fold line and the pair of tear lines is at least one tear line or perforated line. The starting flap is the portion for the flap adjacent line 25 after a portion of the tear lines have been torn.

The fold line and the pair of tear lines are located so as to form side-by side dispensers

that are of approximately the same size and configuration. The fold line and a pair of tear lines and the interconnection between them are each located approximate equidistant between two ends of the carton. The means for closing the flap is the glue.

Merkel et al. does not show a wider bottom panel flap as recited in claim 1. However, Mott teaches a fold-in half shipping box with tear away segment in its front side and top and rear wall. The box can be folded in half to display items contained therein after the tear away lines or segments have been removed. The side panel of the blank has divergent tear lines and the bottom panel 5 has substantially parallel tear line along most of the bottom panel. A portion of the bottom panel 5 has divergent lines near the first panel. The tear lines converge into the other side panel 4 until they met the fold line. After separate dispensers have been formed, the front wall of the dispenser has a low height from the bottom of the dispenser to allow viewing of the pouch. It would have been obvious in view of Mott to provide opening of desired size to allow retrieval and view of the articles.

Applicant argues that Mott's carton fails to disclose tear lines that converge toward a top panel. Contrary to the statement, Mott shows a bottom panel 5, side panels 3,4 and a top panel 2. The side panel 3 has a first side panel tear line<sup>12</sup> and a second side panel tear line <sup>12'</sup>. Both tear lines extend toward the top panel 2 and converge toward one another as they extend toward the top panel. This is clearly shown in Figure 1.

Applicant also made the argument that Mott displays items in back-to-back compartments, rather than side-by-side. But Mott shows the arrangement of articles in Figure 3 of side-by-side as well. Since the arrangements are similar and the perforations in the base panel

Art Unit: 3728

and the side panels allow easy retrieval of the articles due to the larger opening, then it is obvious to make the modification as taught by Mott.

3. Claims 33, 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 32, further in view of Saam (US 5,927,498) or Carroll (US 5,921,398). Merkel discloses generally all of the limitations of the claims, but does not show a plurality of pouches with product. Saam or Carroll teaches a storage and display carton for storing flexible pouches. The pouches having a top and bottom with top of the pouch being less full of the product than bottom. The pouches arranged in two rows with their bottoms being alternatively adjacent an end of the carton and the tops of the pouches meeting in the center of the carton and overlapping each other so that the length between the ends of the carton is from approximately the length of a pouch to one and half times the length of a pouches carried in the carton. The pouches separate into the appropriate compartments after forming the side-by-side dispensers. Accordingly, it would have been obvious in view of Saam or Carroll to store articles such as pouches within the carton of Merkel et al. to separate the articles into the appropriate compartment.

4. Claims 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkel et al. (US 3,002,613) in view of Mott (US 2,152,079) and Saam or Carroll. Merkel et al. discloses a combination shipping and dispensing carton which can be converted into side-by-side dispensers for dispensing pouches in their upright position. The carton comprising a bottom panel 19a,19b, a top panel 18a,18b and foldably attached adjoining side panels 20a,20b,21a,21b, with each end being closed by a top end flap 48,49 foldably attached to the top panel, a side end flap foldably attached to each side panel, a bottom end flap foldably attached to the bottom

panel, with means for securing the flaps in the closed position. The carton has a pair of tear lines 22,23 extending through a side panel between the top panel and the bottom panel. A fold line 27,28 that is scored or interspersed with cuts extends in the other side panel. The fold line and the pair of tear lines being interconnected so that when the pair of tear lines have been torn open, the carton can be formed in to side-by side dispensers by folding the folding line in the other side panel. The interconnection between the fold line and the pair of tear lines is at least one tear line or perforated line. The starting flap is the portion for the flap adjacent line 25 after a portion of the tear lines have been torn.

The fold line and the pair of tear lines are located so as to form side-by side dispensers that are of approximately the same size and configuration. The fold line and a pair of tear lines and the interconnection between them are each located approximate equidistant between two ends of the carton. The means for closing the flap is the glue.

Merkel et al. does not show a wider bottom panel flap as recited in claim 1. However, Mott teaches a fold-in half shipping box with tear away segment in its front side and top and rear wall. The box can be folded in half to display items contained therein after the tear away lines or segments have been removed. The side panel of the blank has divergent tear lines and the bottom panel 5 has substantially parallel tear line along most of the bottom panel. A portion of the bottom panel 5 has divergent lines near the first panel. The tear lines converge into the other side panel 4 until they met the fold line. After separate dispensers have been formed, the front wall of the dispenser has a low height from the bottom of the dispenser to allow viewing of the pouch. It would have been obvious in view of Mott to provide opening of desired size to allow retrieval and view of the articles.

Merkel discloses generally the entire limitation of the claims, but does not show a plurality of pouches with product. Saam or Carroll teaches a storage and display carton for storing flexible pouches. The pouches having a top and bottom with top of the pouch being less full of the product than bottom. The pouches arranged in two rows with their bottoms being alternatively adjacent an end of the carton and the tops of the pouches meeting in the center of the carton and overlapping each other so that the length between the ends of the carton is from approximately the length of a pouch to one and half times the length of a pouches carried in the carton. The pouches separate into the appropriate compartments after forming the side-by-side dispensers. Accordingly, it would have been obvious in view of Saam or Carroll to store articles such as pouches within the carton of Merkel et al. to separate the articles into the appropriate compartment.

***Allowable Subject Matter***

5. Claims 26-27,30,48,50 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
6. Claim 42 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

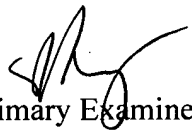
7. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is **571-273-8300**. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST. The examiner's supervisor Mickey Yu can be reached at (571) 272-4562 for urgent matters.

STL  
July 13, 2006

  
Primary Examiner  
Shian Luong  
Art Unit 3728